

John Rawls' theory of justice and the role of reasonableness

La teoría de la justicia de John Rawls y el papel de la razonabilidad A teoria da justiça de John Rawls e o papel da razoabilidade

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Resumen

En este artículo quiero mostrar la importancia del concepto de razonabilidad en la teoría de la justicia como equidad de John Rawls, así como explicar el problema de lo concepto de razonabilidad en esta teoría, a saber, sobre la acusación de debilidad epistemológica, excesividad e ineficacia. El punto de partida será resaltar la exigencia de razonabilidad que se hace para el agente moral y político en la justicia como equidad. Más tarde, identificaré algunas críticas sobre este concepto. Mostraré la crítica hecha por Estlund sobre la insularidad del concepto de razonabilidad y la necesidad de la verdad para la justificación, y la crítica hecha por Timmons y Gaus sobre el requisito de razonabilidad como excesivo y también como ineficaz. En el siguiente paso, voy a tratar de responder a estas críticas y en la parte final del texto intento reflexionar sobre el valor del pluralismo en la teoría de la justicia como equidad.

Palabras clave: Equidad, razonabilidad, cargas de razón y juicio, pluralismo.

Abstract

In this paper I want to show the importance of the concept of reasonableness in John Rawls's theory of justice as fairness, as well as explain the problem of reasonableness in this theory, namely, about the accusation of epistemological weakness, excessiveness and ineffectiveness. The starting point will be to stress the requirement of reasonableness that is made to the moral and political agent in justice as fairness. Later, I will identify some criticism about these criteria. I will show the criticism made by Estlund about the insularity of the concept of reasonableness and the necessity of truth for justification, and the criticism established by Timmons and Gaus regarding the requirement of reasonableness as excessive and ineffective too. In the next step, I shall try to respond to these criticisms, and in the final part of the text I try to reflect on the value of pluralism within the theory of justice as fairness.

Keywords: Fairness, reasonableness, burdens of reason and judgment, pluralism.

Resumo

Neste artigo, quero mostrar a importância do conceito de razoabilidade na teoria da justiça como equidade de John Rawls, bem como explicar o problema da razoabilidade nessa teoria, a saber, abordaremos a acusação de fraqueza epistemológica, excesso e ineficácia. O ponto de partida será enfatizar a exigência de razoabilidade que se faz ao agente moral e político na justiça como equidade. Posteriormente, identificarei algumas críticas a esse critério. Mostrarei as críticas feitas por Estlund sobre a insularidade do conceito de razoabilidade e a necessidade da verdade para a justificação, e as críticas estabelecidas por Timmons e Gaus quanto à exigência da razoabilidade como excessiva e também ineficaz. Posteriormente, tentarei responder a essas críticas e, na parte final do texto, procurarei refletir sobre o valor do pluralismo dentro da teoria da justiça como equidade.

Palavras chave: Equidade, razoabilidade, limites da razão e do julgamento, pluralismo.

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1. INTRODUCTION¹

The central argument of John Rawls' theory of justice seems to be that, from a social point of view, we can reach a consensus on what counts as having a public moral-political value independently of private beliefs of good, such as political and moral principles of equal liberty (first principle of justice), fair equality of opportunity, and common good's difference principle (second principle of justice) which are socially accepted in contemporary democratic societies. The strategy will be to test these principles for (i) their consistency in relation to the fixed points of moral judgments considered at all levels of generality and (ii) for their outcome when applied to democratic institutions, that is, for their ensuring stability for the right reasons, thus leading to political legitimacy. In other words, they will be tested for full reflective equilibrium which is both wide and general.² The starting point, therefore, is that which is considered socially acceptable, *i.e.*, those political moral values which are accepted by citizens in contemporary democracies, such as reasonableness, reciprocity, tolerance, citizenship, and cooperation. These are the values which are used in the process of constructing an original position, as is demonstrated by the central role played by the normative idea of society as a fair system of social cooperation, which implies the normative ideas of free and equal persons within a well-ordered society. These are the ideas that will assume the procedure for determination of the parties under the constraints of the veil of ignorance and circumstances of justice for the construction/choice of moral principles and the reflective equilibrium test. As Rawls says,

We collect such settled convictions as the belief in religious toleration and the rejection of slavery and try to organize the basic ideas and principles implicit in these convictions into a coherent political conception of justice. These convictions are provisional fixed points that it seems any reasonable conception must account for. We start, then, by looking to the public culture itself as the shared fund of implicitly recognized basic ideas and principles. (PL 8)

We must bear in mind that this normative theory requires that the moral and political agent be willing to propose fair terms of cooperation and to abide by them, and also be willing to recognize burdens of reason in an archimedean justification of moral judgments made by individuals, *i.e.*, it will require the recognition of the burdens of judgment in the sense that the moral subject must be reasonable. Does this mean that the subject should be willing to start from the idea of a fair society for the establishment of a public moral criterion, since the idea of reciprocity is already in use, and also willing to acknowledge the fact of reasonable pluralism and the oppressive use of state power?

This is tantamount to acknowledging the existence of various moral convictions about good in contemporary complex societies as a permanent feature, and also to acknowledging that the only way to achieve absolute moral unity is for the State to coerce people into accepting the same concept of good.³ This seems to be an acceptance of human fallibility in achieving absolute justification of moral beliefs, and therefore does not require the subject's moral knowledge of the ultimate criterion of justification, that is, its truthfulness. Rather, it is an attempt to apply the concept of toleration to moral philosophy. Thus, reason is diminished in the sense that it will

¹In this article we will use the following abbreviations of the John Rawls' works: A Theory of Justice (TJ), Political Liberalism (PL), Collected Papers (CP), Justice as Fairness: A Restatement (JF), "Reply to Habermas" (RH).

²In RH, Rawls refers to full reflective equilibrium as "a point at infinity we can never reach, though we may get closer to it in the sense that through discussion, our ideals, principles, and judgments seem more reasonable to us and we regard them as better founded than they were before" (RH 384-385). See, also, JF 31: "Thus citizens have achieved general and wide, or what we may refer to as full, reflective equilibrium. (The adjective 'full' we reserve for features as realized in a well-ordered society)".

³This reference to the requirement of reasonableness includes five general facts that are seen as starting points for justice as fairness: (i) reasonable pluralism, (ii) oppressive use of state power, (iii) support for a democratic regime, (iv) intuitive ideas of political culture, and (v) beliefs in revisability. Two normative ideas are added to these general facts: (i) a cooperative society and (ii) free and equal people. See "The Domain of Political and Overlapping Consensus", in CP 474-478 and PL 48-58.

have a limited ability to achieve justification. The requirement of reasonableness is explained by Rawls in these terms:

The first basic aspect of the reasonable, then, is the willingness to propose fair terms of cooperation and to abide by them provided others do. The second basic aspect, as I review now, is the willingness to recognize the burdens of judgment and to accept their consequences for the use of public reason in directing the legitimate exercise of political power in a constitutional regime. (PL 54)

As it is a disposition, reasonable action (or reasonableness) is seen as a necessary virtue for the agent to deliberate, as it demands a moral disposition to act on the basis of the criterion of reciprocity, and the willingness to accept rational limitation. On the other hand, it is important to note that justice as fairness will not suffice with only a minimum requirement of revisability of beliefs on the part of the individual, although this characteristic is of paramount importance to the holistic model of justification. It is for this reason that the procedures have a central role in the justification of the rule, so as also to require the recognition of certain facts that count as reasons in the procedure or of the original position, reflective equilibrium or overlapping consensus. However, which facts may count as reasons in this procedure? They imply beliefs that are intersubjectively justified, *i.e.*, that can be assumed as social (institutional) facts (*e.g.* that cooperation is socially good), that people have morality, that is, that they are free and equal, and that the requirement of reciprocity is an acceptable measure for the resolution of conflict. These facts do not depend on the approval of an isolated individual, but require social approval even within a historical dimension.⁴ I have tried to show above how the criterion of reasonableness appears to be central to Rawls's theory. However, can a normative theory of justice dispense with the concept of truth for its justification and be satisfied with the criterion of reasonableness alone? Would one not lose all normativity as a result, and cause an inevitable relapse into relativism? Or, alternatively, would it not be excessive and inefficient to require reasonableness from the political agent, as this would require a kind of knowledge that the ordinary agent has no access to or, in extreme cases, from people who are absolutist but not reasonable in their everyday judgments?

In the rest of this paper I will try to answer the questions posed above. I will begin with the criticism made by Estlund (252-275) concerning the insularity of the concept of reasonableness, and the necessity of truth for justification, and the criticism made by Timmons (195-201) and Gaus (130-136) regarding the excessive and inefficient requirement of reasonableness.⁵ I will then try to respond to these criticisms by clarifying the main elements of the theory of justice as fairness.

2. THE CRITICISM OF ESTLUND, TIMMONS, AND GAUS

Let me start with the criticism Estlund makes in his article "The Insularity of the Reasonable" (1998), which states that justice as fairness should include truth and the criterion of reasonableness or acceptability is limited in order to ensure the justification of moral principles, since its model of legitimation cannot be defended due to its incompleteness. This is because the central thesis of *Political Liberalism* is to assert political moral principles of tolerance in the context of public justification which need not be true. This implies that even true doctrines are inadmissible unless they are accepted by all reasonable citizens. Estlund rightly notes, therefore, that the truth is neither a necessary nor a sufficient condition for the admissibility of comprehensive doctrines:

⁴The procedures of the original position and reflective equilibrium are explained in detail in TJ, §§ 4 and 9. It is important to note that this construction and test procedure does not use an inferential process in which knowledge of the principles of justice would be deduced from self-evident premises. Alternatively, justification is considered as a matter of mutual support of many considerations, all of which fit together into a coherent vision. See TJ 21/19 rev. The function of the overlapping consensus procedure is to ensure social stability for the right reasons, so that people who profess reasonable comprehensive doctrines can endorse the same political conception of justice, each from their own point of view. See PL 134.

⁵See also the interesting approach of Paul Weithman (2016) and Roberta Sala (2016) on reasonableness.

The moral idea behind this principle is that no person can legitimately be coerced or morally obligated to abide by legal rules and arrangements unless sufficient reasons can be given that do not violate that person's reasonable moral and philosophical convictions, true or false, right or wrong. (Estlund 253)

The argument that Estlund seems to make is that this principle of justification is offered as part of public justification, in the sense that it applies directly to the justification itself. As such, it should be acceptable to all reasonable-minded citizens, and cannot be relied upon as being true, in the same way as the concept of reasonableness itself cannot. Estlund's thesis appears to affirm that this model of public justification must state the truth, and not just the reasonableness of its fundamental principle, namely that doctrines are admissible as premises in public justification only if they are acceptable to all reasonable citizens. Although this is somewhat different from the well-known criticism made by Raz, in that it makes the correct link between justification and legitimacy, it also asserts that a normative political theory cannot rise above moral truth, without there being any contact between them.⁶ Estlund's central argument is represented by the formulation RAN (Reasonable Acceptance Necessary): "No doctrine is admissible as a premise in any stage of political justification unless it is acceptable to all reasonable citizens, and it need not be acceptable to anyone else" (Estlund 254). If we understand the term 'doctrine' as including factual statements, principles, proposals and even moral judgments, then RAN is itself a doctrine. The issue, therefore, is that this doctrine need not be true but only universally acceptable. Estlund's criticism is that reasonableness, which necessarily entails universal acceptability, must itself be true, otherwise this doctrine would be arbitrary, and people would not need to feel obliged to accept it. The problem here is that RAN is self-applied, since it is itself a premise in public justification. The central purpose of this argument is to show that Rawls needs to consider the hypothesis that his liberal principle of legitimacy may be taken as being true. To summarize Estlund's argument so far, given that Rawls wishes to apply the principle of tolerance to philosophy itself, justice as fairness applies the same principle in the same way, and thus should also assert the requirement of tolerance as being true. The conclusion is that, since it claims to be true, an alternative political conception of justice would be substantive and therefore undogmatic (Estlund 256).

The next step will be to submit for consideration a modified version of RAN, in order to investigate the issue without reference to the content of the idea of reasonableness. In relation to AN (Acceptance Necessary) Estlund states: "No doctrine is admissible as a premise in any stage of political justification unless it is acceptable to a certain range of (real or hypothetical) citizens, C, and no one else's acceptance is required" (Estlund 257).

Here the aim is to show that AN states a necessary condition which is, however, not sufficient for admissibility. As Rawls argues that reasonableness is sufficient for justification, and avoids the claim for truth, the problem is that when one particular version of C is posited before other possible alternative versions of AN, there seem to be no criteria for ensuring that this is, in fact, a correct version of C. The conclusion appears to be clear: there can be no non-arbitrary choice of the possible content of C in the relation between this and the different instances of AN which does not somehow infringe on the claim about truth not being necessary for public justification (Estlund 261-263).

⁶Briefly, in his article "Facing Diversity: The Case of Epistemic Abstinence", Raz's argument is as follows: since justice as fairness has the practical task of providing social but not theoretical stability, and having a weak foundation in the common moral values of tradition, which are considered as being freestanding and consequently suffer from epistemic abstinence (even if this is false), the theory may be accepted if it fulfills its practical role. Raz says that, if we avoid epistemic abstinence, we recognize that the role of the practical principles of justice for achieving the overlapping consensus that guarantees unity and stability would be a theoretical issue concerning the truth of these principles. See Raz 16. See also Gardiner 103-111. This means that for Raz justification is necessarily connected with an idea of truth. For Estlund, as we note at the end of his article, certain obligations may be founded in their political legitimacy, and not in truth. In other words, he believes that the coercive force of political power is legitimately based on its acceptability/reasonableness, i.e., on the acceptance of rules by reasonable and rational people, which shows that he distinguishes justification from truth, and approximates it to legitimacy. The disagreement concerning Rawls's theory arises because he maintains that this proposal will fail unless its fundamental doctrine - the criterion of acceptability - is at least approximately true. See Estlund 275.

Estlund's position is that Rawls's theory must take RAN as axiomatic, thereby establishing contact with truth, at least in a minimal sense. However, this criterion should be modified in accordance with MAC (Modified Acceptance Criterion):

With the exception of this doctrine, no doctrine is admissible or excluded as a premise in political justification on grounds of its truth or falsity, but is admissible just when and because it is acceptable to all reasonable citizens (and no one else's acceptance matters). The present doctrine must be both acceptable to all reasonable citizens and true. (Estlund 266)

It is important to try to understand what change is being proposed here. The criterion of acceptability/reasonableness remains a necessary condition for public justification, since what will justify any comprehensive doctrine is its social acceptability. On the other hand, this doctrine of acceptability must itself be true and acceptable; by being true, it is also a sufficient condition for justification. Then, with the affirmation of the truth of this liberal premise, reasonable moral judgments can also be considered as true. What Estlund appears to have in mind is that the notion of truth which must be used cannot go beyond a minimal sense, *i.e.* "for any statement P, P is true in the minimal sense if, and only if, P". For example, if everyone accepts that murder is wrong, then, "murder is wrong" is true in the minimal sense required by political liberalism. The conclusion Estlund reaches is that for a theory of legitimation to be defensible, it must go beyond this practical dimension of acceptability as the criterion of justification, and stand on its truth (Estlund 270-275).

But there is also another kind of criticism concerning the role of the reasonableness criterion in justice as fairness that accentuates not its weakness, but its excessiveness. This is Timmons's central discovery, namely, that moral theories like the one proposed by Rawls require too much of the moral and political agent, because they require willingness to recognize the burdens of reason. Alternatively, responsibility will be placed on the agent to a lesser degree, and consists of "(i) gathering evidence, (ii) considering and dealing with counterpossibilities, and (iii) dealing with internal conflicts of belief" (Timmons 195).

Let us now examine the reasons for this. Timmons is committed to a model of contextualist moral epistemology, and proposes a doxastic justification of moral belief, since the most common ethical beliefs can be justified by the agent's epistemic responsibility, which implies evaluating alternative situations. His central thesis is that one can be epistemically responsible for ensuring certain beliefs without requiring justification for them, as it is sufficient to evaluate the first-order beliefs of the agent, which involves variable parameters such as goals, perspectives and resources. For Timmons it is not necessary to be engaged in the acceptance of a moral theory for an individual to be doxastically justified in upholding a particular moral belief. Instead, he argues that doxastically justified beliefs must be propositionally justified by the individual, which does not imply that this will, in its turn, be justified by its consistency with a moral principle. The problem with this coherentist model, as with Rawls', is that it does not fit well with everyday moral decisions, because individuals do not first choose between moral theories, and only then check whether their beliefs are correct. Thus, the epistemic contextualist responsibility rule is formulated by Timmons as:

ER: Normally, a person S is epistemically responsible in believing some proposition p at time t only if S checks all of those obvious counterpossibilities whose seriousness is indicated by an adequate set of background beliefs at t. (Timmons 200)

The problem here is that Timmons is opposing coherentism, which requires the agent to have a very large battery of beliefs - first-order, moral and non-moral, and second-order, all of which are essential for the justification of the former. His proposal is intended to be less demanding, since it advocates second-order conservatism in relation to contextually basic beliefs, as first-order beliefs are justified if they are responsibly guaranteed by the agent. For Timmons, therefore, "some moral

beliefs, especially those that are partly constitutive of one's moral outlook, serve as a body of very basic moral assumptions that, in ordinary contexts of moral thought and discussion, are not in need of justification" (Timmons 213).

In justice as fairness, the recognition of rational limits (which is the same as reasonableness) constitute second-order beliefs that have the role of judging the validity of first-order beliefs. As the legitimacy of coercive political power is given by the acceptability of beliefs held by reasonable people, it is achieved through fairness/acceptability as the central criterion of justification. A problem related to Timmons's criticism of excessive requirement would be to question whether unreasonable people would have their political autonomy disrespected by Rawls's method of justification/legitimation. Does justice as fairness not violate the basic rights and liberties of unreasonable individuals? Would this be fair, since in the real world people are generally not reasonable?

The latter fact can also serve to highlight the inefficiency of a criterion of reasonableness for justification. This is the argument put forward by Gaus to criticise Rawls's idea of public justification, which is, in fact, based on a criterion of reasonableness, thus implying a populist theory of practical reasoning, since it must count on people's consent for justification (Gaus 130-131). Gaus's strategy is to show the weakness of the criterion of reasonableness, which would indicate a willingness to propose and follow principles that can be publicly justified; to acknowledge the limits of judgment; to reason correctly; and to make reasoning accessible to others, by using common sense arguments and non-controversial scientific conclusions. The problem is that, for Gaus, people are not reasonable, and he gives three explanations to prove this thesis: (i) the gambler's fallacy, which shows that people can be induced to abandon valid rules of inference and make mistakes in probabilistic judgments; (ii) epistemic *akrasia*, which shows that people are not willing to accept the arguments of common sense and scientific evidence, (iii) absolutist judgments, that is, people often utter their judgments with absolute certainty, which does not fit with required limits of judgment and the accessibility condition.⁷ These three examples show the same argument: real people are not reasonable in their daily lives, therefore reasonableness is not sufficient for justification and should be replaced by rationality, substituting agreement for the victory of one belief over the other one (Gaus 131-136).

3. REPLYING TO THE CRITICISMS

I shall now try to reply to the above objections. As regards Estlund's criticism of the need for the reasonable criterion to be truth in order to arrive at an adequate conception of legitimacy, I shall first of all refer to a central feature of the justification model advocated by Rawls *i.e.*, that he wishes to supersede those dichotomous models in moral philosophy which make a radical distinction between the factual and normative spheres, and seek to establish a complementary relationship between facts and values, a fact which is evidenced by the role played by the method of reflective equilibrium. Reflective equilibrium aims to organize our considered moral judgments so that they can serve as a basis for the construction of principles, in order to provide a coherent moral view (TJ 579/507 rev.). Furthermore, Rawls's attempt to overcome the fact/value dichotomy forces him to adopt a pragmatic strategy of justification, *i.e.*, as a practical rather than a theoretical issue. Thus, the notion of reasonableness within justice as fairness itself has a practical and not a theoretical dimension, that is, it is not considered as an ultimate criterion removed from all reality, but rather as a political ideal, and, for this reason, it is stipulated as a necessary and sufficient condition for justification. As Rawls says: "Observe that here being reasonable is not an epistemological idea (though it has epistemological elements). Rather, it is part of a political ideal of democratic citizenship that includes the idea of public reason" (PL 62).

⁷Gaus cites Deanna Kuhn's research to show the impossibility of relying on the recognition of the limits of judgments for justification, since this indicates that at least half of the subjects investigated (from adolescence to middle age) proved to be absolutist in their judgments. The study coordinated by Kuhn revealed that more than half of the people asked to explain the cause of crime, unemployment and failure in school, always saw their beliefs as right and never as wrong. This study is documented in *The Skills of Argument*. See Gaus 134-135.

Estlund's criticism is that reasonableness cannot be a sufficient condition for justification, as it is only a necessary condition, with the danger that ensuring legitimacy by means of acceptability alone may cause a lapse into arbitrariness. Thus, his proposition is to take the principle of acceptability as minimally true, in accordance with the formula "for any statement P, P is true in the minimal sense if and only if P". However, I do not think this criticism is well-founded. My reason is that the criterion of reasonableness, even when it is not true, must be justified publicly, and this implies the assertion of freestanding moral-political values, *i.e.*, they stand alone in the political sphere by dint of the original position device, which is normative. Note that these values are taken just as they stand socially; in other words, they provide a "satisfactory shared basis of public justification" (CP 485).

This strategy can be seen as an attempt to try to establish the value consistent with the fact, that is, to relate moral-political values with social, political and economic practices of contemporary democratic societies with moral diversity. That is why, in order to establish the justification of principles of justice, a public justification will be needed, which will imply checking if these principles ensure social stability and political legitimacy. Here the argument is that what is acceptable for legitimation will also be acceptable for justification. That is the reason why consensus is what ensures both the legitimacy of the use of political power and the validity of the norm (TJ 580/508 rev.; PL 136)⁸ Thus, the actual task of justifying a conception of justice is not primarily an epistemological problem:

The search for reasonable grounds for reaching agreement rooted in our conception of ourselves and in our relation to society replaces the search for moral truth interpreted as fixed by a prior and independent order of objects and relations, whether natural or divine, an order apart and distinct from how we conceive of ourselves. (CP 306)

I do not think this is the model for arbitrary justification, due to the fact that the accepted principles of justice based on our deepest moral convictions can be tested either by a formal procedure of symmetry in deliberation or a pragmatic procedure for stability and legitimacy. It is true that there is no ultimate criterion that lies outside the bounds of the world. However, the norm is stipulated in terms of social values which gain acceptance by means of their own practices, and are validated through procedures. Normativity is a factual-procedural concept, and Estlund's alternative states that arbitrariness can be eliminated through the use of a minimal conception of truth. However, let us consider the example Estlund himself gives: if everyone accepts that murder is wrong, then, "murder is wrong" is true in the minimal sense required by political liberalism. It therefore seems there is no difference in relation to justice as fairness, since the argument is one and the same: if everyone accepts that "religious intolerance" and "racial discrimination" are unfair in relation to the procedures that are used, then "religious intolerance" and "racial discrimination" are also unfair and, as such, should not be practiced⁹. Note that this procedural strategy appears to possess the same weight as a minimalist conception of truth. This is because this minimalist conception does not presuppose the existence of an order of things regardless of the individuals who serve as the criterion for whether what was said does, in fact, correspond to the said order of things, although it enables moral judgment to be considered as

⁸Maffettone rightly speaks of a "(...) structural connection between the two types of consensus - between liberalism and democracy and between justification and legitimation" (Maffettone 249). Maffettone's thesis is that one can respond to the kind of criticism about the alleged weakness of the criterion of reasonableness by pointing out that justification and legitimation are connected in the way that Rawls understands the justification of norms, thus linking an ideal consensus with a real consensus. He explains this complementarity between justification and legitimation as a 'normative institutionalism' (Maffettone 23 - see the seminal reflection on the centrality of the criterion of reasonableness in justice as fairness in Maffettone 237-249). Laden also posits an alternative project of justice as fairness, and highlights four important elements. For the purposes of this discussion, I wish to draw attention to the third and fourth elements: (3) the arguments are established to serve preferentially as public justification understood as a series of deductions from assumptions about human nature or rationality; and (4) the central idea and most important point of Rawls's thesis are the concepts of public reason and public deliberation. See Laden 379.

⁹Freeman also believes it is possible to place the concept of reasonableness close to that of truth: "Rawls always believed that justice as fairness is the most reasonable (or true, if you will) political conception and that it is in the best position to meet the criterion of reciprocity and provide a basis for public justification required by the liberal principle of legitimacy". See Freeman 230.

objective. It is this conception of representationalist truth that is rejected by Rawls, and not a deflated conception of truth, which is indeed suitable for a pragmatist and coherentist model of justification.¹⁰ I do not think it is useful to over-emphasise the distinction between what is true and what is reasonable, since reasonableness may be understood as practical truth, *i.e.*, as a practical social convergence. If Estlund also denies the traditional conception of truth, then there appears to be no material distinction between what he is proposing and what is being advocated by Rawls.

As regards the other objection concerning the requirement of reasonableness on the part of the moral agent, one must question whether it would be excessive and ineffective, since the moral and political agent does not possess the meta-justificational criterion necessary for the validation of second-order beliefs. Let us therefore return to the explanation of what is reasonable for Rawls, in order to identify the specific content of those beliefs. My intention is to show that this requirement is not excessive, but is, rather, a normal requirement for any citizen in a modern democratic society.

Firstly, reasonableness is the willingness to propose and accept fair terms of cooperation, and it is therefore understood as a moral faculty which enables the agent to propose and then motivate himself to act in accordance with these same fair terms of cooperation because of their intrinsic value. This means that reasonableness is a social virtue which is presupposed in justice as fairness (PL 54). If we look at social and moral virtue in more detail, we observe that reasonableness is: (i) part of moral sensibility; (ii) linked to the idea of reciprocity, which intermediates between altruism and selfishness; (iii) not derived from rationality; (iv) public, so that it guarantees equality among people who recognise it socially (PL 48-54).

Secondly, reasonableness is the willingness to acknowledge the limits of judgments and reason, and to accept the consequences of the public use of reason in conducting the legitimate exercise of political power in a constitutional regime (PL 54). We have seen that this implies acknowledging (i) the fact of reasonable pluralism, *i.e.*, acknowledging moral diversity as legitimate within the restrictions of what is deemed to be reasonable and (ii) the fact of oppression, which is the understanding that only a strong and oppressive state can ensure moral unity. This is an intellectual requirement, since the individual must understand the reality of the prevailing *status quo*, accept that not every reasonable person will support the same overall doctrine and, therefore, that not all doctrines are necessarily true. This will also mean endorsing some form of freedom of conscience and autonomy of thought. Thus, we can see that the acknowledgement of the limits of judgment is central to the idea of democratic tolerance. In this regard, it is important to mention this comment made by Rawls:

It is unrealistic – or worse, it arouses mutual suspicion and hostility – to suppose that all our differences are rooted solely in ignorance and perversity, or else in the rivalries for power, status, or economic gain. (PL 58)

In the light of the above, we can now attempt a response to Timmons's objection by using the following argument: it is not an excessive requirement for a moral and political agent since it is not an excessive requirement for a citizen of a constitutional democracy, since the agent is also a citizen. It is legitimate to require that a citizen act in a rational and reasonable way, that is, make use of judgments, inference and thought, and act on the basis of an adequate sense of moral right. A moral and political agent is a person who has the capacity for both a sense of justice (fairness) and a conception of good (rationality). This means that all moral and political agents must have these two moral powers at a minimum level to allow them to be free and equal citizens in a constitutional regime, and this demand is therefore legitimate (PL 61-62).

¹⁰Although this may seem strange, it is precisely what Rawls does, as we can see in his definition of justification: "Rather, justification is addressed to others who disagree with us, and therefore it must always proceed from some consensus, that is, from premises that we and others publicly recognize as true; or rather, publicly recognize as acceptable to us for the purpose of establishing a working agreement on the fundamental questions of political justice" (CP 394). Note that here 'true premises' and 'acceptable premises' are considered to be interchangeable. The substitution of the word "true" by "acceptable" has the specific function of stressing that no use will be made of a representationalist epistemology or a realistic ontology.

There appears to be no strong disagreement about there being too many demands placed on citizens in real communities. We consider the demand of having to obey established laws as legitimate, *e.g.* those found in the constitution, the criminal code, the civil code, and so on. If someone rapes or kidnaps a person and is arrested and charged for committing the crime, then pleading that he did not know the act was forbidden by law will not be accepted as an excuse. Not even if this person is illiterate or has spent a period of time in a coma. This means that it is required of all citizens that they obey what the law determines and, moreover, that they lead their life in a moral and reciprocally impartial way. In other words, citizens should be civilized, and be able to live in harmony with their peers. It is in this way that they acknowledge the limits of judgments and reason, which is also the case in their role as moral agents.

Timmons's criticism is that the requirement of acknowledging the limits of reason implies knowledge of a second-order belief, which will allow the justification of first-order beliefs. I think this thesis is erroneous, at least in part, as Rawls seeks to make it clear that the acknowledgement of rational limits is not a position of scepticism, and does not imply a sceptical argument concerning the limitations of knowledge, since overlapping consensus would otherwise be rendered impossible. Rather, it is obtained by historical experience and not by an argument of doubt of knowledge and reason: "This difficulty is borne out by historical experience, by centuries of conflict about religious, philosophical, and moral beliefs" (PL 63). It does not prevent some moral and political agents from having a second-order epistemological belief, but this is not a requirement for all agents. In general, the agent must *know how* to be reasonable, without necessarily *knowing that* reasonableness is a true premise. This is merely a manifestation of tolerant respect for the values defended by others, and is learnt more from history than from epistemology. So, would it be too much to require some knowledge about History from the citizen? I do not think so, as it would not be too demanding to expect this kind of knowledge from the moral and political agent, being this moral agent himself a citizen.

However, if people are not in fact reasonable, then would this requirement be effective? It is my contention that the central argument of justice as fairness does not require that agents *must* be reasonable, but only that they can be reasonable. The Rawlsian moral theory presupposes an important distinction between 'competence and performance', and this implies that the requirement of reasonableness falls on the moral capacity and not on the real actions of agents.¹¹ All that Rawls's theory requires is that individuals should act fairly; they can choose what would they consider to be a reasonable position, but this need not depend on the action of the real subject. As Rawls himself says:

Now one may think of moral theory at first (and I stress the provisional nature of this view) as the attempt to describe our moral capacity; or, in the present case, one may regard a theory of justice as describing our sense of justice. (TJ 41 rev.)

To prove this argument, it is enough to show that one or several persons are indeed reasonable. The research carried out by Deana Kuhn (which Gaus makes use of) provides proof of the central argument of justice as fairness, since her investigations demonstrate that less than half of the subjects interviewed act reasonably, that is, it shows that these subjects are not absolutist in their everyday judgments. This is sufficient evidence to prove that moral and political agents can act reasonably, and that they also possess the ability to do so in a moral way as citizens.

¹¹I have made use of an approach by John Mikhail, who interpreted justice as fairness as if it were a universal moral grammar which human beings are born with, in analogy to the linguistic grammar postulated by Chomsky, in Rawls, TJ, § 9. Mikhail argues that the distinction between competence and performance, which is so important to Chomsky's linguistic theory, is also used by Rawls, in terms of moral competence and moral performance. For Rawls, moral competence is associated with individual moral knowledge, and with suitable mental conditions for the action of the agent, while performance is associated with morality as moral knowledge is used, i.e., it relates to the moral behavior of individuals. See Mikhail 17-19.

4. FINAL REMARKS

In this final part of this paper, I wish to emphasize what can be gained by using reasonableness instead of truth as an objective criterion for determining what is fair to establish the principles of justice for the basic structure of society. We see this from the way in which justice as fairness establishes the precepts of reasonable discussion. As the person who is aware of the limits of reason and judgment is a reasonable person, they will recognize certain precepts which guide deliberation and public discussion. These precepts of reasonableness are: (i) the disposition to achieve reasonable agreement in political discussion, (ii) the psychological stability to accept substantive disagreements on basic questions (constitutional issues and basic justice), and (iii) the willingness to credit others with a certain good faith, accepting diversity (CP 478-479).

These precepts of reasonableness seem to lead us to an important defense of tolerance and pluralism, since in contemporary democratic societies, it is normal to have moral plurality and, therefore, the best way to deal with this normative diversity would be with an attitude of tolerance in regarding people's moral and political convictions. Instead of seeking justification from the criterion of truth, Rawls thinks of justification from the criterion of consensus. Rawls says:

Rather, justification is addressed to others who disagree with us, and therefore it must always proceed from some consensus, that is, from premises that we and others publicly recognize as true; or better, publicly recognize as acceptable to us for the purpose of establishing a working agreement on the fundamental questions of political justice. (CP 394)

Since justification will not deal with a discovery of true premises, but with a social recognition of acceptable premises, a conception of public justification is arrived at that must show the possibility of stability for the right reasons in a democratic society marked by reasonable pluralism. Thus, the possibility of overlapping consensus on a political conception of justice is a way of checking whether there are sufficient reasons to propose and defend a conception of justice as fairness that can be honestly upheld, without rejecting or criticizing the religious and moral values of the members of society. This seems to guarantee the moral basis for the legitimacy of political power in a democratic society.

In this way, a given political society with such a reasonable overlapping consensus can achieve a deeper and more reasonable basis for the social unity available in a modern democracy. Such social unity produces stability for the right reasons, which means: (i) that the basic structure is regulated by the most reasonable political conception of justice; (ii) that this conception of justice is endorsed by an overlapping consensus formed by all reasonable comprehensive doctrines; (iii) that the political discussion on essential constitutional and basic justice issues will be held on the basis of reasons specified by the most reasonable political conception of justice (RH 391; JF 184-188).

With this in mind, it is important to note that this conception of stability for the right reasons is normative, since it cannot be confused with the stability given by the simple balance of forces in contingent circumstances, that is, as a *modus vivendi*. Rawls stresses that stability is obtained for the right reasons, when citizens act correctly according to the appropriate principles and their sense of justice, a sense that is acquired by individuals because they grew up under just institutions (including family) and lived with this ordered social world. This stability is ensured by the sharing of the same moral-political conception, which can be consistent with the diverse reasonable doctrines of the citizens, in order to ensure the legitimacy of this moral-political value. And so, this already points us to a solution given by practical social convergence, in which the institutional political context is fundamental for the justification of the principles of justice.

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